IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12620 of 1993

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LILAJI BHODAJI - Petitioner(s)
Versus
COLLECTOR & 4 - Respondent(s)

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Appearance :
MS SUDHA R GANGWAR for Petitioner(s) : 1,
MS TRUSHA PATE, ASST. GOVERNMENT PLEADER for Respondent(s) : 1, 3,
NOTICE SERVED BY DS for Respondent(s) : 2,4 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 05/12/2007

ORAL JUDGMENT

1. This petition is preferred under Articles 226, 227 and 14 of the Constitution of India against the order dated 28.4.1992 passed by the Prant Officer & Assistant Collector and also against

the order dated 14.12.1992 passed in LP/Appeal No.137 of 1992, which was preferred against the above referred order dated 28.4.1992.

2. The facts giving rise to this petition are as follows:-

2.1 One Mr. Bodhaji Amtaji, father of present petitioner, was cultivating without authority, a piece of land bearing block No.240 in survey No.228 situated at village Katadara.

2.2 It is not in dispute that the said land is government waste land and said Mr. Bodhaji Amtaji was cultivating the said land unauthorizedly.

2.3 In support of the submission that earlier his father was cultivating the said land, the petitioner - Mr. Lilaji Bhodaji has produced certain revenue receipts to demonstrate that his father was paying land revenue.

2.4 The petitioner has further submitted that from 1951 to 1978 the said land was in the name of father of the petitioner and after death of his father i.e. Mr. Bodhaji Amtaji, it is the petitioner who is cultivating the said land and he is in possession of the same.

2.5 The petitioner has further stated that in 1992 the respondent No.2 i.e. Prant Officer published a notice and initiated proceedings in respect of the said land and pursuant to the said proceedings, the competent authority passed an order granting the said land in favour of one Mr. Ramaji Motiji i.e. present respondent No.5. Though, the petitioner has mentioned that copy of the notification bearing No.170/92 by which the respondent No.2 had initiated the proceedings is annexed, the same is not found on record. Nothing turns on the said document inasmuch as the copy of the order dated 28.4.1992 passed by the competent authority granting the land in question to respondent No.5

is at Annexure – B to the petition from which it transpires that on the conditions mentioned in the said order, the competent authority granted land bearing block No.240 to respondent No.5.

2.6 As per the averments in the petition, name of Mr. Ramaji Motiji was, pursuant to the above referred order dated 28.4.1992, entered into village record and that when the petitioner came to know about the said development, the petitioner filed an appeal, which was registered as Appeal No.137/1992.

2.7 The respondent No.1, before whom the said appeal was filed, passed an order dated 3.3.1993 after hearing the parties and dismissed the said appeal. The petitioner, upon being aggrieved by the said order has preferred present petition.

3. In the petition, the petitioner has prayed that the order passed by the Prant Officer giving the land in question to respondent No.5, i.e. the

order dated 28.4.1992 at Annexure – B, be set aside and the order passed by respondent No.1 dismissing the appeal i.e. the order dated 14.12.1992 Annexure – C also be set aside and the petitioner be declared owner of the land bearing block No.240 of survey No.228.

4. Ms. Gangwar, learned advocate appeared and argued for the petitioner and Ms. Patel, learned AGP represented for respondent Nos.1 to 4.

5. Ms. Gangwar, learned advocate has submitted that after the sad demise of his father, the petitioner was cultivating the land in question and that right from 1951 said land was in the name of his father. In support of her said submission, she tried to rely upon the receipts demonstrating payment of revenue which are annexed to the petition at Annexure – A. The said documents are copies of the village form No.9. On the basis of the said documents, she contended that the action of the respondent in

allotting the land in question by order dated 28.4.1992 to respondent No.5 is illegal and unjustified. No other contention has been raised by Ms. Gangwar.

5.1 As against the said submission of Ms. Gangwar on behalf of the petitioner, Ms. Patel, learned AGP for respondent Nos.1 to 4, supported the orders dated 28.4.1992 and 14.12.1992.

5.2 She further submitted that the documents at Annexure – A which purport to be the revenue receipt are not evidence to establish ownership or possession of petitioner or his father. She further submitted that the petitioner could have supported her submission with help of village form No.8(A), but not with help of village form No.9. Extending her said submission, Ms. Patel, has also submitted that even otherwise, the documents produced by the petitioner appear to be of some different lands or relating to someone else inasmuch as some of the receipts

bear account No.151 whereas other receipts bear account No.140. In her submission, even the names of the persons in whose favour the receipts are issued appear to be different inasmuch as some of the receipt bear name of Mr. Ramaji Amthaji whereas few other are in the name of Mr. Bodhaji Amthaji. In other words, the said documents, as per her submission, are not reliable.

5.3 It is noticed from the said documents that some of the receipts which bear name of Mr. Bodhaji Amthaji are of account No.140 while few other receipts which, though have name of Mr. Bodhaji Amthaji are of account No.151. Couple of receipts bear name of Mr. Ramtuji Bodhaji and one of the respondent is in connection with account No.311.

5.4 It is pertinent that no explanation as regards such discrepancy has been offered by Ms. Gangwar. In light of these documents, Ms. Patel,

submitted that the said documents do not support or justify the contention advanced by Ms. Gangwar on behalf of the petitioner and they do not deserve any consideration. She, however, does not dispute the fact that initially the land in question was being cultivated, though unauthorizedly, by petitioner's father.

6. In this background of facts, document at page – 28 i.e. village form No.6 acquires significance. The said document i.e. village form No.6 reflect entry No.1621 which appears to have been mutated in the revenue record on 4.12.1977.

6.1 On examination of the said entry, it transpires that vide entry bearing No.LND/9967 dated 4.1.1970 the Collector, Ahmedabad had ordered to grant the land in question to Mr. Bodhaji Amthaji on condition of payment of purchase price plus fine. The said entry further records that said Mr. Bodhaji Amthaji had for considerable time failed to pay the purchase

price plus fine as ordered by the Collector. Therefore, after awaiting action from said Mr. Bodhaji Amthaji, the competent authority passed an order dated 4.10.1971 i.e. after almost 20 months whereby the earlier order came to be cancelled.

7. It is pertinent to note that neither the said order dated 4.10.1971 nor the said entry bearing No.1621 are challenged by the petitioner at any point of time and they are not challenged in present petition as well. Thus, the said order and the entry have become final. Consequently, the order granting land in question to the petitioner's father stands cancelled by virtue of order dated 4.10.1971 and the mutation entry No.1621 dated 4.12.1977 also has become final. It is also relevant to note that though the said document i.e. village form No.6 has been produced on record of present petition by the petitioner, the details flowing from said document have not been specifically mentioned in the petition.

7.1 At this stage, it is also appropriate to refer to village form No.7/12, which is available on record wherein, it is recorded that in 1978-79 one Mr. Ramaji Motiji is shown cultivating the land, of course unauthorizedly.

7.2 In the said document the land is shown as the government waste land. The said document requires reference of village form No.6 bearing entry No.1621 wherein, after ordering cancellation of the order dated 4.10.1971, it is further ordered that the land in question should be entered as government waste land. It is in light of the said order that the entries in form No.7/12 appear to have been made in 1978-79. The copies of village form No.7/12 of subsequent period i.e. 1984-85, 1985-86 are also available on record and they reflect the name of Mr. Ramaji Motiji and it is shown that said Mr. Ramaji Motiji was cultivating the land unauthorizedly.

7.3 It appears that it was in background of such facts and circumstances that the competent authority had issued public notice of which the petitioner has made a reference in his petition in para – 4 of the petition. From perusal of the order dated 28.4.1992 it becomes clear that it came to be passed pursuant to the notice dated 19.2.1992 i.e. after issuing notice, and that hearing in connection with the notice dated 19.2.1992 was also held in the Office of Prant Officer on 6.3.1992.

7.4 Thus, it was after conducting hearing on 6.3.1992 that the order dated 28.4.1992 was passed by which the Prant Officer, respondent No.2 granted the land in question to Mr. Ramaji Motiji i.e. respondent No.5 on the conditions specified therein.

8. As noted earlier, the petitioner carried the said order dated 28.4.1992 in appeal before the

respondent No.1 by virtue of Appeal No.137/1992. The said Appellate Authority i.e. respondent No.1 heard the said appeal and after considering submission of the appellant passed an order dated 14.12.1992. In the said order dated 14.12.1992, the Appellate Authority has also taken into account the entry dated 4.12.1977 and after considering other relevant aspects also found the order dated 28.4.1992 correct and proper and therefore confirmed the order dated 28.4.1992 and declined to entertain the appeal. The Appellate Authority by the said order dated 14.12.1992 rejected the appeal.

9. The petitioner and/or his father never quetioned the order dated 4.10.1971 and/or mutation entry made on 4.12.1977, by virtue of which the earlier order dated 4.10.1971 allowing the land in question to the petitioner was cancelled with further direction that the land in question would vest in government. Thus, now the said order dated 4.10.1971 and the entries pursuant to said order have become final.

10.Hence, in such facts, it is now too late in time for the petitioner to question the decision dated 28.4.1992 and/or the order dated 14.12.1992, which are substantially and materially based on the order dated 4.10.1971 and the mutation entry bearing No.1621 dated 4.12.1977.

10.1 Further, while making grievance against the orders, the petitioner is conveniently overlooking the default in payment of the purchase price and fine, which was required to be paid pursuant to the order dated 4.1.1970. If such default had not occurred, then, the subsequent events also would not occurred. In other words, for the subsequent events, the petitioner has to thank his father or himself.

11.After having committed default in compliance with the order dated 4.1.1970, now, it is not open for the petitioner to question the order

dated 28.4.1992 passed by the competent authority and that after having not challenged the order dated 4.10.1971.

11.1 By not paying the purchase price and fine as ordered by the Collector by virtue of order dated 4.1.1970, the petitioner's father and/or the petitioner waived whatever right they had acquired by cultivating the land in question and/or by virtue of the order dated 4.1.1970.

12. In light of such facts and circumstances, in my view, the order dated 28.4.1992 and order dated 14.12.1992 cannot be said to be illegal or arbitrary.

12.1 After having committed default pursuant to the order dated 4.1.1970, the petitioner has lost right to make grievance against grant of the land in question to anyone else. Further, as per the village form No.7/12, from the period 1978-79 onwards, it is the respondent No.5, who

appears to be cultivating the land in question. Thus, when in April – 1992 the order by respondent No.2 came to be passed, the respondent No.5 was already cultivating the land in question since about 4 years as per the details reflected from village form No.7/12.

12.2 In that view of the matter also, the decision and action of the respondents, particularly, respondent No.1 of granting the land in question to respondent No.5 cannot be said to be illegal or arbitrary or misconceived.

12.3 There is yet another aspect attached to this petition, namely, this Court in exercise of powers under Articles 226 and/or 227 would not sit in appeal over decision of the competent authority or the Appellate Authority much less when there are concurrent findings and orders. For the said reasons also, there is no justification for exercising discretionary jurisdiction in present petition.

The petitioner has, in view of the aforesaid facts and circumstances and in light of the aforesaid discussion, failed to make out any cause warranting interference by this Court under Articles 226 and/or 227 of the Constitution of India. The petition, therefore, fails. Accordingly, petition is rejected. Rule discharged. Interim relief stands vacated. No order as to costs.

[K.M.Thaker, J.]

FURTHER ORDER

After conclusion of the dictation of the order, a request on behalf of the petitioner is made to continue the interim relief, which was granted by an order dated 8.11.1993. In this regard, it is required to be noted that on 8.11.1993 when the ad-interim relief was granted, it was in terms of paragraph – 8(b). The said paragraph -8(b) reads as follows:-

"pending the hearing and final disposal of

this petition restrain the respondents from dispossessing the petitioner of the land bearing Survey No.228, Block No.240 situate in village Katadra, Tal. Dehgam;"

As noted earlier, the respondent No.5 appears to be cultivating the land in question since 1978-79. However, since the said relief was granted by the Court, despite the aforesaid facts and it has remained in operation for almost 17 years, the request of the petitioner is accepted and the interim relief, which has remained in operation, is continued upto 31st December, 2007.

[K.M.Thaker, J.]

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